

Before the  
Federal Communications Commission  
Washington, D.C. 20554

APR 13 2005  
FCC 05M-22  
04304

In The Matter of	)	MB Docket No. 04-191
	)	
San Francisco Unified School District	)	
	)	
For Renewal of License for Station	)	Facility ID No. 58830
KALW(FM), San Francisco, California	)	File No. BRED-19970801YA
	)	

**ORDER**

**Issued:** April 14, 2005

**Released:** April 15, 2005

This is a ruling on Enforcement Bureau's ("Bureau") Motion for Additional Discovery filed on April 11, 2005, based on a Fourth Request for Production of Documents filed by the Bureau on April 7, 2005. On April 12, 2005, San Francisco Unified School District ("SFUSD") filed Opposition in Part to Enforcement Bureau's Motion for Additional Discovery.

Upon Motion to Enlarge Issues filed by the Bureau on February 15, 2005, the Presiding Judge added an issue:

To determine whether San Francisco Unified School District through its agents made misrepresentations of fact and/or lacked candor before the Commission during, or in connection with, discovery testimony taken by the Enforcement Bureau on September 28, 2004.

*See Memorandum Opinion and Order FCC 05M-17, released April 1, 2005, modified by Addendum FCC 05M-20 (April 5, 2005).* In the ruling adding the issue, it was provided that "there will be no discovery on the added issue, unless there is a showing with particularity that further discovery *is required* for meeting burden of proof." (Emphasis added.)

The Bureau asserts as reason for such post designation discovery the fact that it bears the burden of proof. So to meet its burden, the Bureau now seeks additional documentary evidence including "attendance records of the station's General Manager and communications among the station's Operations Manager, its General Manager, and the General Manager's immediate supervisor." This discovery would be in addition to documents earlier made available to the Bureau through discovery and investigation that were used, or could have been used, at the depositions of September 28, 2004.

SFUSD has no objection to the Bureau's Fourth Request to the extent that the Bureau seeks documents not already produced that relate to the added issue which concerns the state of candor during deposition testimony of September 28, 2004. Therefore, it seems reasonable that any additional discovery should be limited to that which is relevant and probative to the September 28 depositions, the focal point of the added issue. The discovery should include documents generated between February 5, 2001 and April 6, 2001, pertaining to SFUSD's response to the LOI. Also, documents not previously produced should now be produced that were generated between April 6, 2001 and September 28, 2004 that concern SFUSD's LOI response, and/or preparation for the depositions. However, such document discovery should not be open-ended "through the present" as the Bureau requests.

Reasons for limiting discovery include the closeness of the hearing date (June 6, 2005) and SFUSD's need to prepare for trial. It is also a factor that the added issue is based on same day testimony of two witnesses for which there had been prior discovery before being deposed. In addition, in a measure of sensible cooperation, SFUSD has promised not to assert the attorney client privilege or attorney work product with respect to relevant evidence, with a *proviso* accepted by the Bureau, that documents which could be asserted as privileged are under seal and will be considered *in camera* by the Presiding Judge, unless he finds good cause for public record disclosure.<sup>1</sup>

Specifically, the Bureau now seeks additional documents that relate to any communications regarding "Application and File" exchanged among and/or between Ms. Savoy, Mr. Helgeson, and Mrs. Wright during the period March 1, 2001 to the present. SFUSD only objects to being required to look for and produce documents that are outside the period February 5, 2001 (Letter of Inquiry) and April 6, 2001 (Response to LOI). These limitations on scope of document discovery requested by SFUSD seem reasonable. However, since the added issue relates to the depositions of September 28, 2004, all documents relating to SFUSD's response to the LOI that were generated between February 5, 2001, and September 28, 2004, as well as all undiscovered documents relating to the two depositions of September 28, must be produced.

According, IT IS ORDERED that the Enforcement Bureau's Motion for Additional Discovery filed on April 11, 2005, IS GRANTED in part and IS DENIED in part.

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<sup>1</sup> The parties are on notice that there is a predisposition to putting evidence on the public record once it is marked and received in evidence. The reason for non-public disclosure at that stage would have to convince the Presiding Judge that there may be resulting substantial harm to a person or party.

IT IS FURTHER ORDERED that SFUSD shall produce to the Enforcement Bureau responsive documents described above that were generated during the period February 5, 2001 through September 28, 2004.

FEDERAL COMMUNICATIONS COMMISSION<sup>2</sup>

A handwritten signature in black ink, appearing to read "Richard L. Sippel". The signature is fluid and cursive, with the first name "Richard" and last name "Sippel" clearly legible.

Richard L. Sippel  
Chief Administrative Law Judge

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<sup>2</sup> Courtesy copies of this *Order* were transmitted to counsel for each of the parties by e-mail on the date of issuance.